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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/606,040
Filing Date: June 25, 2003
Appellant(s): DUFOURG, PIERRE-STEPHANE

MAILED

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GROUP 3600

Scott W. Smilie
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 28, 2006 appealing from the Office action mailed February 14, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-----------|-------|---------|
| 1,559,695 | HATCH | 11-1925 |
| 4,046,261 | YAKE | 9-1977 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over in Simon (US patent no. 5,531,410) view of Hatch (US patent no. 1,559,695). Simon discloses a cable conduit running longitudinally in a first direction and comprising at least one substantially U-shaped section that has a bottom (70) and two lateral flanges (71) having open ends with length greater than its width, the conduit delimiting an interior volume capable of accommodating pipes lines running longitudinally the first direction, the conduit comprising rigid lengthwise wires (8) running substantially parallel to the first direction and rigid crosswise wires (70) running substantially at right angles to the first direction, the crosswise wires being fixed the lengthwise wires toward the interior volume of the conduit, and each crosswise wire comprising base portion (70) belonging to the bottom of the conduit and two lateral branches (71) belonging respectively to each lateral flange of the conduit. However, Simon does not disclose the bends of the lengthwise wires being designed to accommodate the base portions of crosswise wires and being sized so that the base portions of the crosswise wires and the longitudinal portions of the lengthwise wires lie at substantially the same level.

It is well established that overlapping cross wires in a support of trellis-works create protuberances and bumps. Eliminating protuberances and bumps in such supports composed of trellis-works via bends and folds in the wires to create a level and planar surface the support are conventional and well-known methods. Hatch demonstrate such desire to make a level surface on a meshed wire frame via bends to eliminate protuberances and bumps associated with such support of trellis-works. Hatch teach such wire frame running longitudinally in a first direction and comprising at least one substantially U-shaped section that has a bottom (6) and two lateral flanges (4), the conduit delimiting an interior volume, the conduit comprising rigid lengthwise wires (5) running substantially parallel to the first direction and rigid crosswise wires (4 and 6) running substantially at right angles to the first direction, the crosswise wires being fixed the lengthwise wires toward the interior volume of the conduit, and each crosswise wire comprising base portion belonging to the bottom of the conduit and two lateral branches belonging respectively to each lateral flange of the conduit, wherein at least the lengthwise wires belonging to the bottom of the conduit each comprise a succession of longitudinal portions (5) connected by bends (7) protruding away from the interior volume of the conduit, the bends of the lengthwise wires being designed to accommodate the base portions of crosswise wires and being sized so that the base portions of the crosswise wires and the longitudinal portions of the lengthwise wires lie at substantially the same level; wherein the longitudinal portions of the lengthwise wires are straight and parallel to the first direction wherein the base portions of the crosswise wires and the longitudinal portions of the lengthwise wires are arranged substantially the

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same plane (page 1, lines 55-58) such that the items carry on the plane will rest on both the transverse and longitudinal bottom members so that there's no tendency for unwanted tilting of the item supported thereon (page 1; lines 70-76).

It would have been obvious to one of ordinary skill in the art to have modified the base of Simon by providing bends to the lengthwise wires to accommodate the base portions of crosswise wires and being sized so that the base portions of the crosswise wires and the longitudinal portions of the lengthwise wires lie at substantially the same level so that bumps and protuberances are eliminated such that the items supported thereon may lie flatly on both the transverse and longitudinal member as taught to be desirable by Hatch

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon (US patent no. 5,531,410) in view of Hatch (US patent no. 1,559,695) as applied to claim 1 above, and further in view of Yake (US patent no. 4,046,261). Simon and Hatch combined disclosed all the claimed features of appellant's invention except for the width of the bend is the same as or greater than two times the crosswise wire and that the bends each with a flat bottom. Yake teaches a bottom surface made of lengthwise and crosswise wires where the lengthwise has bends (where wire 4 and 9 rests) has flat bottom and having a bend width greater than twice the width of the crosswise wire (4 and 9, figure 3) for creating a feet for stabilizing the support on a surface. It would have been obvious to one of ordinary skill in the art to have modify the bend of Simon and Hatch combined such that the bend has a flat bottom with a width greater than two times the crosswise wire as taught by Yake to facilitate stability.

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Furthermore, it would have been an obvious matter of design choice to provide the bend width corresponding to the crosswire or greater than twice the width since appellant fail to disclose the criticality to having a bend width of the corresponding with to the crosswire or specifically greater than twice the width. Moreover, it appears other widths would perform as well.

(10) Response to Argument

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is both that the motivation to combine the references, namely Simon in view of Hatch, is found in the references themselves and is in the knowledge available to one of ordinary skill in the art.

The motivation to combine that is found in the references themselves. Simon discloses a cableway constructed from crosswise and lengthwise wires similar to appellant's invention and such is an old and well-known method of constructing cableway as admitted by appellant and in his cited prior art of Muhlethaler, US patent no. 5,062,605. The primary reference of Simon goes further to discuss the well-known

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problems associated with cableway constructed from connected wires or bars. Simon states on column 1, lines 25-30,

"Such portions of cable way present the drawback of risking damage to the electrical cables when they are placed in position and more particularly those cables located near the upper ends of the transverse wires. Such damage is essentially due to the cutting edges of the upper ends of the transverse wires. "

(also see figure 2 prior art in Simon).

Simon recognizes that protuberance or protrusions particularly in the upper ends of the transverse or crosswise wires presents the greatest damage to the cable. Such problem with protuberance or protrusions is also a recognized problem on the base of the trelliswork as admitted by appellant in this discussion in the "background of the invention" (page 1, paragraph [0005]) which states

"Known latticework trunking of this type does, however, have the disadvantage that the pipes or lines contained in the trunking experience deformation where they cross the crosswise wires, under the effect of their self-weight and/or under the effect of the pressure exerted by clamps that secure the said pipes or lines to the latticework trunking."

It is well recognized by Simon and in the art as discussed in appellant's background of the invention that the main concerns associated with cableway composed of welded trelliswork are protuberance and protrusions associated with transverse or crosswise wires overlapping the lengthwise wires in the trelliswork.

Simon solves the problem of the protuberances or protrusions near the upper end of the transverse wires by providing folds or bends (72) over the lengthwise wires (9). It is also recognized in Simon that the advantage of such folds and bends of the transverse wires "increase the safety of the cable ways, as they make it possible to retain the marginal wires in the event of rupture of welded spots" (Simon, Col. 1, lines 48-52).

Turning back now to appellant's issue of motivation to combine. Is there a motivation to also rid the well-known problem of protuberance or bumps created by the crosswise wires traversing the lengthwise wires? Simon identifies the problems of protuberances associated with crosswise or transverse wires at the upper end. To solve the problem, Simon provides folds and bends to rid the upper end of damaging protuberances. Appellant is also concerned with the crosswise wires that transverse and overlap the lengthwise or longitudinal wires. Such overlap causes problems to the cables lay in the cableway by essentially creating the bumps or protuberance over the base of the cableway where such bumps deforms the cables lay therein by virtual of its self-weight as discussed in the background of the invention.

To solve the problem of bumps or protuberances in the base of the cableway, one of ordinary skill in the art would have been motivated to look in other supports made of trelliswork to eliminate the problems of protuberances or bumps created by overlapping of cross-wise and lengthwise wires.

Such support of trelliswork is a knowledge generally available to one of ordinary skill in the art. Appellant's invention is concerned with eliminating bumps or

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protuberance on a support made of cross-wise wires overlapping lengthwise wires which is known problem in the art of supports made of trellis-works. Simon solves the problem of the protuberance in the upper end by providing bends and folds. Hatch is concerned with eliminating the bumps and protuberance as well in a support made of trelliswork.

Hatch is a support for bottles and is a support composed of lengthwise wires (5) and cross-wise wires (6) overlapping one another. To eliminate the bumps or protuberances in the base of the trelliswork, Hatch provides bends or offsets (7) to accommodated the crosswires (6) such that "the offsets (7) in the longitudinal bottom members (5) bringing the upper edges of the bottom members (6) in the same plane permits the bottles to rest on both the transverse and the longitudinal bottom members so that there is no tendency for the bottle to tilt." (Hatch, page 1, lines 70-76).

The motivation to combined is found in the references themselves as well as what is generally available to one of ordinary skill in the art. The problems associated with cross-wires overlapping lengthwise wires which create protruberances and bumps have been identified by Simon as well as in appellant's background of invention. Overlapping of cross wires creates bumps and uneven surfaces. It is a problem well established in the art as discussed in Simon and Hatch and as well as in the background of invention in appellant's disclosure.

In response to appellant's argument that Simon and Hatch is nonanalogous art, it has been held that a prior art reference must either be in the field of appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the

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appellant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Simon discloses a cableway in the field of appellant's endeavor, Simon and Hatch presents trelliswork that is reasonably pertinent to the particular problem with which appellant was concerned. Appellant's cableway is concerned with making a cableway of crosswise wires and lengthwise wires overlapping each other such that there are no bumps or protuberances to deform the cables. Simon noted a part of the problem of such transverse wires overlapping longitudinal wires is that protuberances or bumps are created along the cableway particularly at its upper end (Simon, figure 2). To resolve the problems, folds and bends are created by Simon to eliminate such protuberances and bumps. It is well established that cableway composed of transverse wires overlapping lengthwise wires create protuberances and bumps as discussed in Simon and in appellant's background of the invention. Indeed such problems occurs in any support constructed of wire works as exemplified in Hatch. Hatch also resolves the problem by providing folds and bends (7) along the lengthwise wires (5) to create an even surface. Consequently, Hatch is pertinent to the particular problem with which appellant was concerned. Therefore is analogues art.

Regarding claims 4-6, appellant argues since claim 1 was argued to have been overcome the prior art, then claims 4-6 which depends therefrom would also have overcome the rejection. As discussed above, claim 1 has not overcome the rejection of Simon in view of Hatch and such argument is based purely on assumption.

Regarding Yakes, appellant argues that longitudinal members 4, 9 are not in the same plane as the traverse members 12-20. However, such features of longitudinal member and traverse members being in the same plane has been demonstrated by the primary rejection of Simon in view of Hatch as discussed above where Hatch teaches solving the well established problems of bumps and protuberances created by cross wires overlapping lengthwise wires in supports having latticework by providing bends or folds in the lengthwise wires to accommodate the width of the transverse wires. Yakes teaches that the bends in the wires (12-20) can be made greater than twice the width of the wire (4 and 9) and that is located within the bend to create a feet on the bottom of the rack for stability purposes. Appellant's specification discusses that the width of the bend is greater than twice the thickness for the advantage of "making it easier to assemble to crosswise wires 6 with the lengthwise wires 5 by increasing the acceptable manufacturing tolerances" (page 2, paragraph [0042]), the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).


Furthermore, regarding appellant's recitation in claim 4, that the width of the bend corresponds to the width of thickness of the crosswire, it would have been an obvious matter of design choice to provide the bend width to correspond to since appellant fail to disclose the criticality to having a bend width corresponding to the width of the crosswise wire. Moreover, it appears other widths would perform as well.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Korie Chan
Primary Examiner
Art Unit 3632

Conferees:

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